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APPEAL LITIGATION TO THE TERMINATION

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One of the main objectives of business law aims to achieve is the protection of workers against termination. In the 20th article of the Labor Law number 4857, there are regulations about the appeal to the notification of the termination and the procedure of the notification of the termination. According to the regulation, it is regulated that workers terminated their employment contract without showing any reason or a valid reason to the notification of the termination can sue in the labor court within one month from the date of notification of the termination and employer is responsible from the burden of proof. However, if the worker claims that termination rely on another reason, he or she obliged to prove this claim according to regulations. With the appeal litigation to the termination, it can be found that the termination is invalid. As a result, the worker can return to work. Within the scope of job security, the appeal litigation to the termination is the head of tools which aim to protect workers.

Keywords: Employment, labor courts, work, corporation, worker.

Generally

The appeal litigation to the termination is one of the most important tools for performing job security. The appeal litigation to the termination is a way of an appeal to the workers can apply for to the termination which is performed without any valid reason or complying with the procedures provided by law. With the appeal litigation to the termination, it can be found that the termination is invalid. As a result, the worker can return to work.

The appeal litigation to the termination is a way of an appeal to the workers can apply for to the termination which is performed without any valid reason or complying with the procedures provided by law. When we consider from this aspect, this right of litigation has an important role in working life in order to ensure job security.

One of the main objectives of business law aims to achieve is the protection of workers against termination. Since the period of the Labour Law No. 3008, there are legal regulations about protecting workers against termination in our country. These regulations are tried to be developed from time to time, but until the Law No. 4773 enacted in 2002, the protection of workers against termination was not enough.

With the appeal litigation to the termination, it can be found that the termination is invalid. As a result, the worker can return to work. Since the main objective of this litigation is the

worker's returning to the job, this litigation does not contain claim for compensation. Since here the worker's objection is about the invalidity of the termination and its legal consequences, with the appeal to termination, the worker cannot claim the payment of the law and the rights attached to the end of the employment contract.

The Legal Nature of the Appeal Litigation to the Termination

The appeal litigation to the termination cannot be considered as a constructional litigation. In order to use the right of termination which causes constructional effect, employer not having the obligation to sue and the employer's using unilaterally the right of terminate within the limits set by the law are obstacle that cause the appeal litigation to the termination to be considered as a constructional litigation. Moreover, with the decision to return to work of the employment, the tribunal employment contract cannot be established again.

According to *Özekes*, the decision of the worker's return to the work is an expression decision in terms of civil procedure. Depending on this decision, worker's returning to work is given a provision of an expression that must be fulfilled. This provision of an expression contains the invalidity of the termination or in other words identification. If the result of the termination accepted the end of the business relationship, then in order to return to the work the re-establishment of the contract with directly the decision of the court and in this respect worker's returning to the work would be required. However, in such a situation adoption of the provision as a constructional provision is possible. However, regulation in the Law determined that the termination is invalid and due to the invalidity of the termination, justified that the continuation of the employment contract and comment about the returning to work are right. If the worker did not begin to work, considering the worker's salary from least four to the eight months, determination of compensation should be made. This provision paragraph contains the nature of identity. Provision of paragraph which is about worker's compensation is considered as an expression of the provision.

According to Tanrıver, in order to adjudge provision, the litigation must be litigation. Here the litigation is not litigation but litigation about worker's returning to the work. Therefore, with said law if it is decided that the termination is invalid and worker cannot return to the work, functioning discipline is provisions. It is just as the results of criminal conviction in the criminal law. If the worker does not return to work, functioning sanction is mentioned in the 2nd sentence of the 1st paragraph of Article 21. If the employer does not permit the worker to start working, the employer falls under the compensation liability. This sanction is required to become a certain amount of compensation to be operative. Thus, in 2nd paragraph of the Article 21, means for determining the amount of compensation can only be this. If not starting to work does not take time until the finalization of the decision. Sanctions to be applied are in the 3rd paragraph of Article 21. Thus, approaching it as litigation is not correct.

The Place Where the Litigation Held

According to Business Law article 20/1, workers terminated their employment contract without showing any reason or a valid reason to the notification of the termination can sue in the labor court. If the parties agree, the disagreement can be taken to a special arbitration. Parties of a collective bargaining agreement do not want a special arbitrator about this subject. Labor courts are special courts established to resolve disagreements arising from working life. These courts

aim to use the rights of workers which are recognized in the laws of the workers as possible as inexpensively, quickly and easily. Labor courts were established in 1950 with Labor Courts Law No. 5521. In this law, organization, responsibility and authority of Labor courts and the trial procedure to be applied in these courts are stated. In 1950, there is a president from judges and one member from workers' and employers in the first shape of Labor courts established as collective courts. With cancel the decision of the Constitutional Court in 1971, Labor courts became single-judge courts. Constitutional Court abolished the provisions of the Labor Courts Law on workers 'and employers' representatives by seeing them against the independence of the courts. Basic provision regulating the task of Labor courts found an editing area in the 1st article of Labor Courts Law. According to the relevant article, according to the Labor Law, labor courts are responsible from resolving legal disagreement in the context of the conclusion of work between those persons working and employers or any claim based on Labor Law.

In labor courts, the regulation concerning authority found the editing area in the Article 5 of Labor Courts Law. According to the relevant article, ‘’Each litigation of the Labor Law can be in the court, in accordance with the Turkish Civil Code, considered as the residence of somebody sued against or in the court which is responsible for the office in which worker doing his job. The contract against these cannot be valid.’’ Here when determining the worker's office, the date of the opening of the litigation is essential.

Procedure

According to 447/1 Article of the Civil Procedure Law, the procedure of the Labor Law will be a simple procedure. According to the relevant article, in cases which other laws made reference to oral or series judging, related provisions are applied with a simple judicial procedure of this law. When we evaluate Article 7 of Labor Courts Law and 447/1 'Article of Civil Procedure Law together, the result is that labor courts have a simple proceeding.

According to 20 Article of the Labor Law, workers terminated their employment contract without showing any reason or a valid reason to the notification of the termination can sue in the labor court. If the Parties agree, the litigation can be taken to a special arbitrator in same amount of time. Reason for providing the opportunity to go arbitration is that business litigations take a long time in the courts and when it became widespread, workload of the courts reduced.

According to 20/1 Article of the Labor Law, workers terminated their employment contract, they must sue within one month from the notification of the termination. If disagreement is seen by a special arbitration, then it should be taken to a special arbitration in the same period of time. It should be noted that the obligation to sue within one month is only for the claim for returning to work and other related rights.

Parties of the Litigation

According to the Labor Law, labor courts are responsible from resolving legal disagreement in the context of the conclusion of work between those persons working and employers or any claim based on Labor Law, and consequently one of the parties of the appeal litigation to termination is worker, while another is employer.

According to 20 Article of the Labor Law, workers terminated their employment contract without showing any reason or a valid reason to the notification of the termination can sue in the labor court within one month from the notification of the termination. In addition, the employer

must prove a valid reason for termination, but if the worker claims that there is another reason for the termination, the worker also must prove his or her claim. The employer must write the notice of termination and indicate the reason for the termination with a clear and precise manner according to 19/1 Article of the Labor Law. Worker's indefinite period of the employment contract cannot be terminated with such reasons which contain claims for worker's behavior or performance without defense of worker against the claims.

The employer must write the notice of termination and indicate the reason for the termination with a clear and precise manner according to 19/1 Article of the Labor Law. Reason specified by the employer must be able to require the termination of the employment contract. Although the reason stated by employer is correct, if it is not mentioned in a clear and right way to require the termination, the defense cannot be considered as right. The employer must also prove that he or she received the worker's defense. If the employer is unable to present evidence concerning the received defense, the termination is accepted as invalid.

If the employer claims that the termination has a valid reason while the worker says it has another reason, judgment can be proved by evidence because these facts are not legal process. Labor Court can judge that procedural decisions such as lack of jurisdiction and the litigation are not regarded as litigated or it can make decisions on acceptance or rejection of the termination in proceedings of returning to work.

Law Road

You can resort to the law road within eight days from the notification of the decision against the result of the termination of the labor court like in the other decisions of the labor court. Within the framework for the job security, according to Articles 20 and 21 of the Labor Law, decisions made by the local court in the appeal litigation to termination can be appealed.

When you resort to the law road against the result of appeal litigation to termination, the Supreme Court can decide at the end of appellate review in two ways. Firstly, if it finds the decision appropriate to procedures and the law, it confirms the decision. Now, because there is no law road to be consulted, the decision is finalized. Secondly, as a result of the appellate review of the Supreme Court, if the Supreme Court finds grounds of appeal right, then it refuse the decision of the first instance court and the litigation is seen again.

References

1. **Özdemir,** Erdem: İş Sözleşmesinden Doğan Uyuşmazlıklarda İspat Yükü ve Araçları, İstanbul, 2006, s. 290.
2. **Özekes**, Muhammet: "İş Kanunu'nun 20. ve 21. Maddelerinin Medeni Yargılama ve İcra Hukuku Bakımından Değerlendirilmesi", Baki Kuru Armağanı, Ankara, 2004.
3. **Pekcanıtez**, Hakan/**Atalay**, Oğuz/ **Özekes**, Muhammet: Medeni Usul Hukuku Ders Kitabı, Ankara 2012.
4. **Kuru**, Baki/**Arslan**, Ramazan/ **Yılmaz**, Ejder: Medeni Usul Hukuku Ders Kitabı, Ankara, 2012.
5. **Tanrıver,** Süha: "Tartışma", Medeni Usul ve İcra- İflas Hukukçuları Toplantısı-II, 2003.